

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CHERI LABLANCHE,

PLAINTIFF,

V.

**NATIONAL BOARD OF MEDICAL
EXAMINERS – (NBME), FEDERATION
OF STATE MEDICAL BOARDS –
(FSMB), EDUCATIONAL COMMISSION
FOR FOREIGN MEDICAL GRADUATES
– (ECFMG)**

DEFENDANTS.

CIVIL ACTION NO. 4:13-CV-00204

**DEFENDANTS' MOTION FOR CONTINUANCE OF THE RULE 16 CONFERENCE
AND OTHER DEADLINES**

Defendants National Board of Medical Examiners (“NBME”), Federation of State Medical Boards (“FSMB”), and Educational Commission for Foreign Medical Graduates (“ECFMG”) (collectively, “Defendants”) file this Motion for Continuance of the Rule 16 Conference and Other Deadlines (“Motion”), and would respectfully show this Court as follows:

1. Plaintiff filed this lawsuit on January 25, 2013. On January 28, this Court issued an Order for Conference and Disclosure of Interested Parties (“Order”). That Order scheduled an initial pretrial and scheduling conference for May 17, 2013; directed the parties to confer pursuant to Federal Rule of Civil Procedure 26(f); and ordered that the parties prepare and file a joint discovery/case management plan by May 7, 2013.

2. On May 7, 2013, Defendants filed a Motion for Continuance of the Rule 16 Conference and Other Deadlines. (Motion for Continuance, Docket No. 8, 4:14-cv-00204.) As

the basis for the Motion for Continuance, Defendants cited Plaintiff's failure to properly effect service on any Defendant in this case.

3. By Order dated May 9, 2013, this Court granted Defendants' motion. That Order rescheduled the initial conference for July 19, 2013; and ordered that the parties prepare and file a joint discovery/case management plan by July 12, 2013.

4. Two months have passed since this Court's Order, yet Plaintiff has not even attempted to properly effect service of process.

5. Because of the reasons set forth below, the Rule 16 deadlines still cannot be achieved.

6. Although Plaintiff filed this lawsuit on January 25, 2013, Plaintiff to date has failed to properly effect service of process on any Defendant in this case. As a result, Defendants have filed a Rule 12(b)(5) Motion to Dismiss, or for More Definite Statement Pursuant to Rule 12(e) (the "Rule 12 Motions"). Defendants incorporate by reference the arguments set forth in the Rule 12 Motions, and urge this Court to grant the Rule 12 Motions and dismiss this case in its entirety.

7. In the alternative, the scheduling conference and its associated deadlines must be continued once again. Rule 16 contemplates the issuance of a scheduling order only after a defendant has been served with process or has made an appearance in the case. *See* Fed. R. Civ. P. 16(b)(2) ("The judge must issue the scheduling order as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared.").

8. Further, as noted in the Rule 12 Motions, Plaintiff's Complaint requires a more definite statement because it fails to identify any cognizable legal basis supporting Plaintiff's

claims. The value of a discovery conference and case management plan are thus diminished unless Defendants are availed the opportunity to fully-assess the legal rights Plaintiff purports to possess. Only then can Defendants determine what discovery is needed to refute Plaintiff's claims.

9. Similarly, as pleaded Plaintiff's Complaint creates uncertainty regarding whether this Court has subject-matter jurisdiction over these claims. Resolving the jurisdiction issue at the outset potentially could save the parties from allocating unnecessary time, resources, and money to develop the discovery plan in this case.

10. If granted, the Rule 12 Motions could resolve the foregoing issues and could potentially dispose of this case in its entirety before proceeding to the requirements of Rule 16 and Rule 26.

11. Defendants therefore respectfully request that this Court postpone the Rule 16 conference and associated deadlines until such time as the Court has ruled on Defendants' Rule 12 Motions.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By: /s/ Alaina King Benford

Alaina King Benford

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**Counsel for Defendant National Board of
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Medical Boards, and Educational Commission
for Foreign Medical Graduates**

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2013, a true and correct copy of the above and foregoing Defendants' Motion for Continuance of the Rule 16 Conference and Other Deadlines was filed using the Court's Electronic Filing System and that service on known Filing Users, including Plaintiff noted below, will be accomplished through certified mail and/or electronic transmission.

Cheri LaBlanche
12806 Southspring Drive
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713-733-9777

By: /s/ Peter C. Tipps
Peter C. Tipps

CERTIFICATE OF CONFERENCE

I hereby certify that on the July 11, 2013, the parties conferred via telephone regarding the substance of this Motion for Continuance of the Rule 16 Conference and Other Deadlines. Plaintiff stated that she does not agree to postpone the joint discovery/case management plan filing deadline.

By: /s/ Peter C. Tipps
Peter C. Tipps